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**BEYOND THE BARS: THE DILEMMA OF TRYING JUVENILES AS ADULTS**- Banshika Gupta & Priyanshi Chakraborty<sup>1</sup>**ABSTRACT**

*"Are we prepared to confront the dual identities of youth—innocence and culpability—in our legal system?"*

On May 19, two IT professionals were killed in Kalyani Nagar after their motorcycle was hit by a speeding Porsche car allegedly driven by a juvenile in an inebriated condition. This tragic hit-and-run incident in Pune involving a minor from a wealthy family sparks outrage and investigations. This abstract delves into the legal precedents, international perspectives, amendments, and critical analysis surrounding the practice of trying juveniles as adults. The rudimentary argument for trying juveniles as adult hinges on the age of culpability and severity of the crime thus focusing on the perceived need for appropriate punishment over rehabilitation. This paper carries out qualitative research by surveying to get general public opinion on the incident mentioned above. Moreover, this paper also highlights the concept of juvenile delinquency and the underlying factors contributing to the increase in crimes committed by juveniles.

On the other side of the coin, a debate continues on the developmental differences between juveniles and adults considering the physical and mental immaturity which leads to the inability to understand the consequences of their actions. Indeed, the critics emphasize rehabilitation, reformation, and reintegration of juveniles into society.

Subsequently, this abstract aims to provide a deeper understanding of the critical and practical aftermath of this pivotal issue in the criminal justice system. Deciding whether to try a juvenile as an adult, boils down to ensuring public safety, weighing justice, and considering the chance for the young person to reform into a responsible citizen. Ultimately there is a need to balance both the severity of the offense and the potential for rejuvenation.

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**"Children must be taught how to think, not what to think."**

- Margaret Mead

**KEYWORDS:** Juvenile, Delinquency, Heinous offense, Adult, Porsche case, Juvenile Justice Act 2015

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## **INTRODUCTION**

"There can be no keener revelation of a society's soul than the way in which it treats its children." — Nelson Mandela

Juvenile delinquency, the occurrence of minors committing criminal acts or offenses, is a universal challenge that affects societies regardless of their complexity. Unlike crimes committed by adults, these actions are referred to as "delinquent acts," acknowledging the age and developmental differences of young individuals. Juvenile delinquency is indeed a socio-legal problem that emerged with the establishment of juvenile courts and related legal frameworks.

This research paper focuses on two pivotal questions: **"Should juveniles be tried as adults in a court of law?"** and **"Can juveniles commit crimes under the façade of juvenile delinquency?"** These questions delve into the complex intersection of juvenile justice, legal accountability, and societal perceptions of youth offenders.

The first question probes the debate surrounding whether the legal system should treat juveniles who commit serious offenses as adults, potentially subjecting them to harsher punishments. It asks whether treating them as adults in court is the right approach, considering their age, maturity, and potential for rehabilitation.

The second question explores the concept of juvenile delinquency, which involves acts that would be considered crimes if committed by adults but are treated differently when committed by minors. This raises important questions about how we define and address youth behaviour within the legal system, balancing accountability with the need to support young people in making positive changes.

The paper also deals with the recent case study of the infamous Porsche accident which highlights the need for a guilty teenager to be punished by adult laws, raising critical questions about justice, public safety, and the consequences of youthful actions. Furthermore, the research broadens its scope by examining international perspectives on juvenile justice laws. By comparing how different countries handle youth offenders, the paper seeks to identify best practices and lessons that could inform

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improvements in the current legal frameworks. Moreover, it delves into the reasons driving calls for reform in juvenile justice laws. It explores societal attitudes toward youth crime and current legal approaches.

### **PUNE PORSCHE TRAGEDY: A SPEEDING CAR, TWO DEATHS, AND A COVER-UP**

The Pune Porsche case is a deeply tragic and legally complex incident that underscores issues of privilege, juvenile justice, and accountability. In early hours of May 19, 2024, a high-end Porsche allegedly driven by a 17-year-old boy, collided with a motorbike ridden by 2 engineers in Pune, resulting in death. This event has sparked widespread public outrage and legal scrutiny.

**The Sequence of Events:** The night of the accident began with **Vedant Agarwal (17)** and his friends celebrating at Cosie Restaurant and Bar in Koregaon Park, Pune, after Vedant scored 60% in his 12th Board Examination. Despite being minors, Vedant and his friends were served **alcohol** until midnight, accumulating a bill of Rs 48,000, paid using Vedant's father's credit card. Subsequently, the group moved to Blak Club in Marriott Suites, arriving at 12:25 a.m. and continuing to consume alcohol until 1:22 a.m., when they paid a Rs 20,000 bill and left.

- After leaving the club, Vedant, in an intoxicated state, drove his father's **Porsche Taycan Turbo S** towards his home. At around 2:30 a.m., near **the** Kalyani Nagar junction, Vedant lost control of the speeding car, reportedly traveling at over **200 kmph**, and crashed into a motorcycle ridden by **Aneesh Awadhiya** and **Ashwini Koshta**. Ashwini died on the spot, while Aneesh succumbed to his injuries later in the hospital.

**Immediate Aftermath:** Vedant attempted to flee the scene but was apprehended by locals and handed over to the police. An FIR was promptly lodged against him at Yerwada police station. Vedant was produced before the Juvenile Justice Board (JJB), where the police sought his custody in a juvenile observation home and appealed for him to be tried as an adult due to the severity of the incident. However, the JJB granted bail to Vedant with conditions that included writing a 300-word essay on road accidents, working with the traffic police for 15 days, and attending psychiatric treatment and counseling for his drinking habit. This decision provoked widespread public outrage, as the conditions were perceived as extremely lenient given the gravity of the crime.

**Investigation and Evidence** The police investigation revealed significant evidence of Vedant's intoxication and involvement in the accident. CCTV footage and witness statements from various sources formed the major evidence. A crucial twist in the investigation emerged when it was discovered that

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Vedant's blood sample at Sassoon Hospital was allegedly swapped with his mother's to conceal his inebriation. This led to the arrest of Vedant's parents, Dr. Ajay Taware (former head of the forensic department at Sassoon Hospital), Dr. Shrihari Harnol (the casualty medical officer at the time), and a Class IV employee, Atul Ghatkamble, for tampering with the blood sample in exchange for financial favors. The tampering was intended to destroy the evidence of Vedant's drunkenness at the time of the accident.

**Legal Proceedings: Panel Finds 'Glaring Lapses' In Bail to Teen Accused-**The police filed a comprehensive final report with the JJB. The report included statements from Vedant's friends who were with him at the party, his co-passenger, and a driver present in the Porsche at the time of the accident. The police also highlighted the witness statements and CCTV footage proving Vedant was drunk and driving the car that caused the fatal crash.

Further complicating the case, the police investigation revealed that *Vedant's father and grandfather had allegedly coerced a family-employed driver to take the blame for the accident.* This led to additional FIRs against Vedant's father and grandfather, who were arrested and placed in judicial custody. The police also arrested the *owners and managers of the two restaurants* where Vedant and his friends were served alcohol.

**Longarm and loopholes of law: Public Outrage and Legal Debates-**The incident has ignited a significant public outcry, primarily focused on the perceived leniency of the initial bail conditions set by the JJB. The case has prompted a broader debate on juvenile justice, *particularly the appropriateness of trying minors as adults in cases involving severe crimes.*

Legally, Vedant's case falls under **Section 304 of the Indian Penal Code (IPC)**, dealing with **culpable homicide not amounting to murder**. This offense is classified as a 'serious offense' under the Juvenile Justice (Care and Protection of Children) Act, 2015, rather than a 'heinous offense,' which prevents the JJB from transferring the case to an adult court. This classification was confirmed by the Supreme Court's ruling in **Shilpa Mittal vs. the State of NCT**, which addressed a similar case involving a minor causing a fatal accident. The ruling established that offenses with a maximum punishment of more than seven years but no prescribed minimum term should be considered 'serious offenses.'

The Pune Porsche case is a tragic reminder of the severe consequences of reckless behavior and the misuse of privilege. The deaths of Aneesh Awadhiya and Ashwini Koshta have sparked a necessary debate on the adequacy of juvenile justice laws in handling serious offenses committed by minors. While

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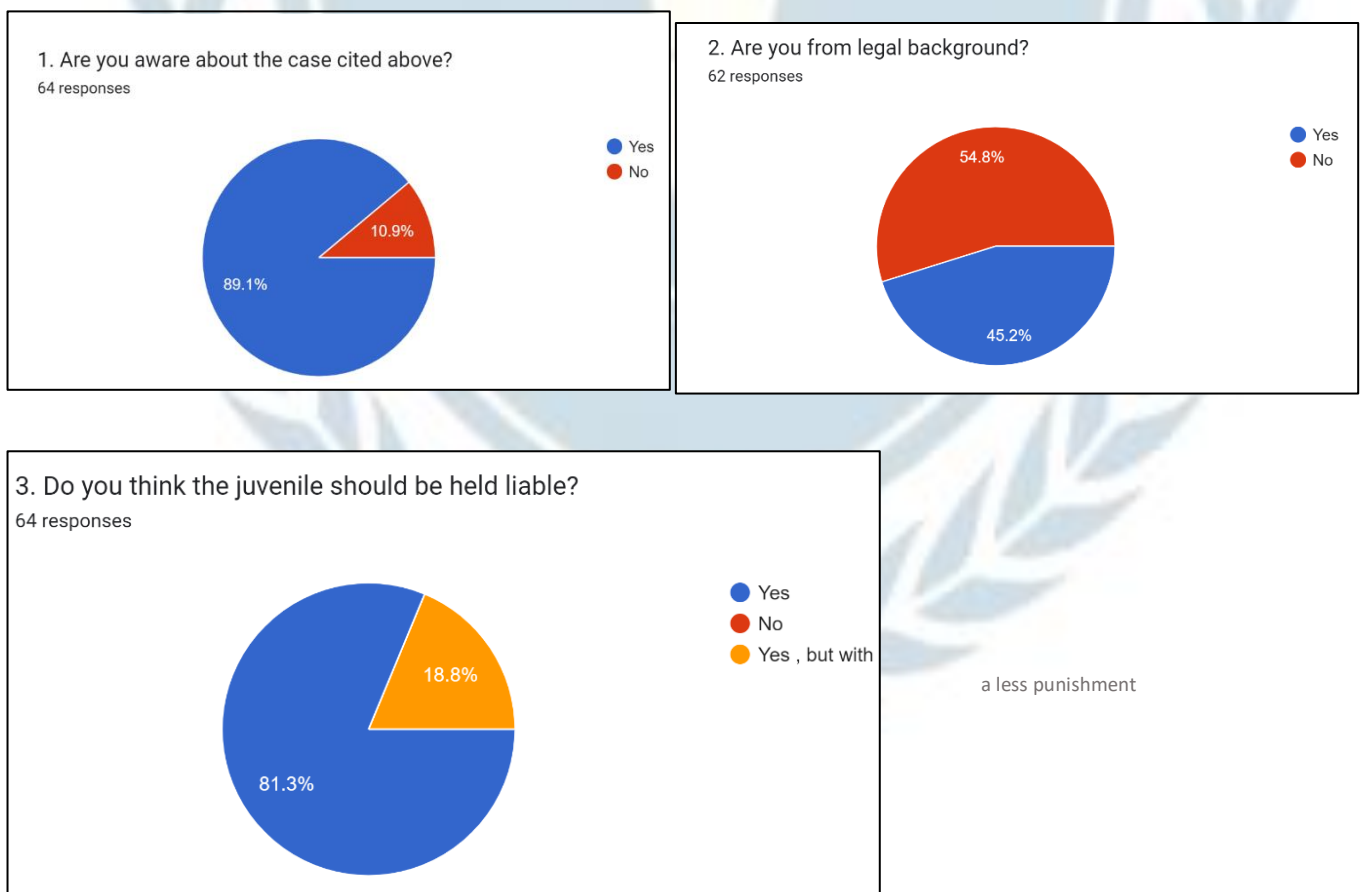
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the legal framework prioritizes rehabilitation, the case underscores the need for a balanced approach that ensures accountability and justice for the victims while upholding the principles of juvenile justice.

*There are several aspects to address in this analysis. Firstly, what are the legal stipulations? Secondly, was the law appropriately applied in this instance? Thirdly, is the public outrage, while understandable, appropriately directed in terms of the juvenile's bail conditions and as well as exploration of the 'judicial waiver' – the option to 'treat the child as an adult' in the judicial process?*

### **A DETAILED ANALYSIS OF SURVEY FINDINGS<sup>2</sup>**

Based on the **survey results**, there are multifaceted and nuanced opinions regarding the case of a juvenile delinquent who, due to reckless driving under the influence of alcohol, caused the death of two individuals. The case presents a complex intersection of juvenile justice, parental responsibility, and societal accountability, with varied perspectives on the appropriate legal and moral responses.

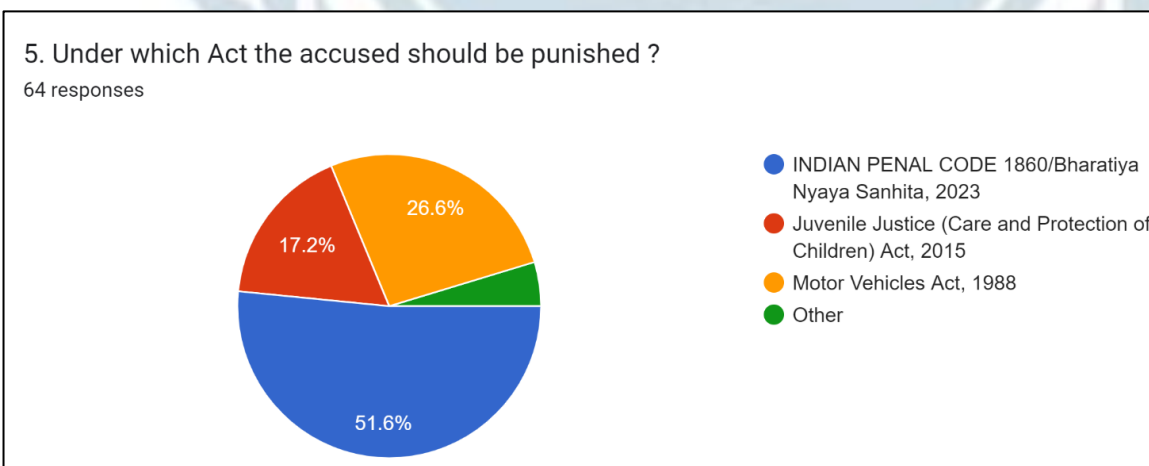
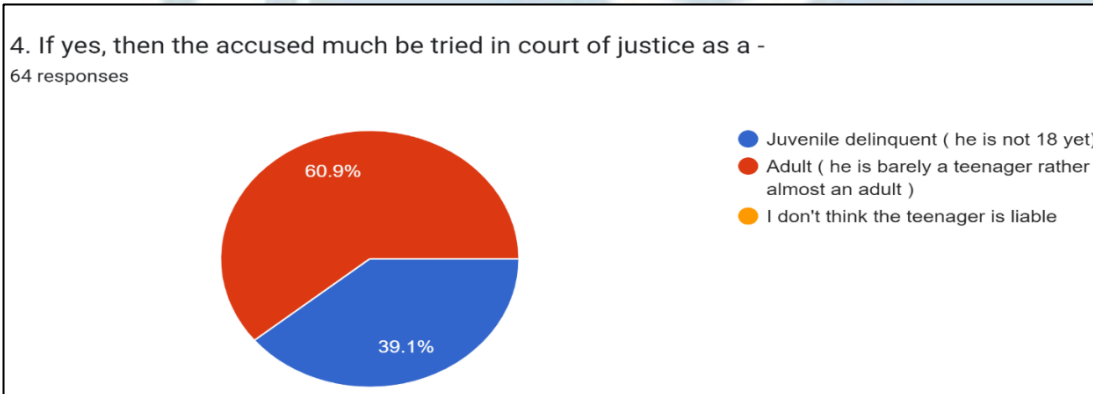


<sup>2</sup> Teenage Recklessness: The Porsche Catastrophe, <https://forms.gle/itYTzGgwTUHhQG1h6>

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Firstly, opinions are divided on whether the juvenile should be held liable, reflecting a broader debate on how the justice system should handle serious offenses committed by minors. Some respondents advocate for strict punishment under the Juvenile Justice Act, 2015. They argue that the severity of the offense—resulting in the loss of two lives—warrants the maximum penalty within the juvenile justice framework. This perspective emphasizes accountability and the need to deter similar behavior among other juveniles.

Conversely, others suggest a lighter punishment under the Juvenile Justice Act, considering the juvenile's age and potential for rehabilitation. This viewpoint is rooted in the belief that minors possess a greater capacity for reform and that the justice system should focus on rehabilitation rather than retribution. Proponents of this approach often cite psychological studies indicating that juvenile brains are not fully developed, particularly in areas related to impulse control and risk assessment.

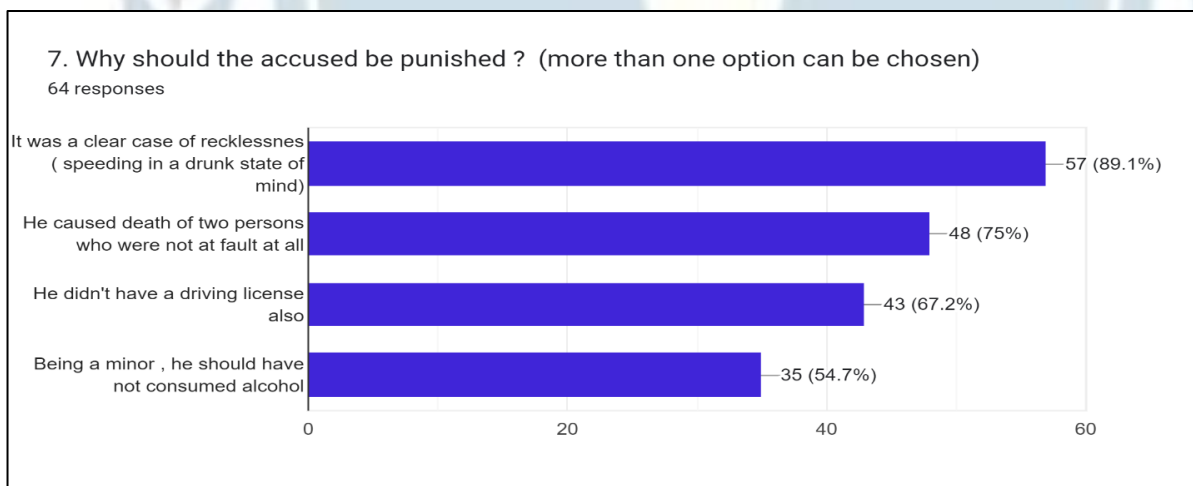
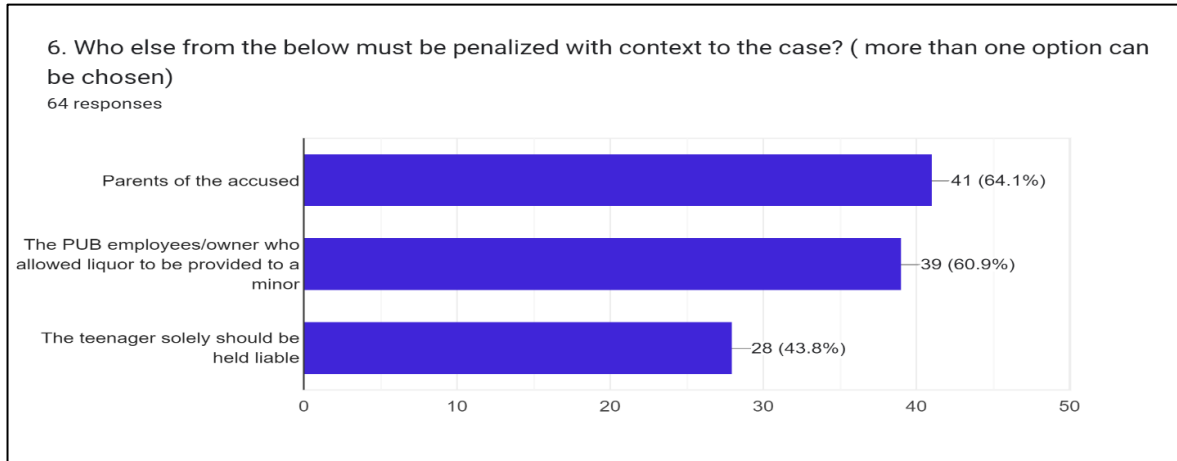


Another significant portion of respondents believes that the juvenile should be tried as an adult under the Indian Penal Code, 1860, or the Motor Vehicles Act, 1988. This stance is driven by the gravity of the offense and the irreversible harm caused. *They advocate for this approach and argue that the juvenile's actions, particularly driving under the influence of alcohol and without a license, demonstrate a level of*

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*recklessness and disregard for human life that necessitates adult-level accountability.* They contend that treating such severe offenses leniently under juvenile law undermines justice and fails to adequately address the victims' families' loss and societal expectations of safety and justice.



Beyond the direct accountability of the juvenile, many respondents hold the juvenile's parents responsible for the incident. This perspective is based on the belief that parents play a crucial role in supervising and guiding their children's behavior. Allowing minors access to alcohol and permitting them to drive without a license are seen as significant lapses in parental responsibility. Respondents suggest that parents should face legal consequences or penalties to reinforce the importance of their role in preventing such tragedies.

Additionally, there is widespread agreement on the culpability of the establishment that provided alcohol to the minor. This aspect of the case highlights concerns about the enforcement of laws prohibiting the sale of alcohol to minors. Respondents call for stricter regulation and enforcement, including severe penalties for establishments that violate these laws. They argue that such measures are necessary to deter businesses from engaging in irresponsible and illegal practices that endanger public safety. The survey

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highlights the complexity of balancing justice, rehabilitation, and societal protection in addressing serious offenses committed by minors.

**Other opinions-**The respondents expressed their concern over the juvenile's reckless driving leading to an accident, criticizing lax enforcement and lenient punishments in the country's legal system. They advocated for stricter rules and penalties to deter such behavior, including holding parents accountable for their children's actions. The respondents strongly criticized the boy's parents for allowing him to drive, emphasizing that such privileges should not have been granted. They also blame the traffic police for failing to intervene promptly, regardless of the driver's age. According to them, juveniles should be punished as an example to others and emphasize the need for better guidance of youth by parents. They highlight systemic issues contributing to youth delinquency, such as easy access to alcohol and drugs, calling for a reformation of juvenile justice and stricter regulations overall to safeguard the nation's future.

To delve deeper into the case, it is necessary to under the concept of juvenile justice and the legal aspect of the same in India.

### **CONCEPT OF JUVENILE DELINQUENCY**

The concept of juvenile justice is more of a philosophy than a mere justice system for children in conflict with the law. It emphasizes care, protection, treatment, rehabilitation, aftercare, and follow-up. This perspective shifts the focus from punishment to a more holistic approach that prioritizes the welfare and development of the juvenile. Concerning the above context, it is important to understand the meaning of "juvenile" as it frames the approach taken within the justice system. Unlike adults, juveniles are considered to be in a formative stage of life where they are more susceptible to change and rehabilitation.

- **JUVENILE:** The term juvenile derives its etymology from Latin roots; is derived from the Latin word "*juvenilis*," or "*juvenis*," meaning "young" or "youth." It refers to a child under the age of majority, which is typically 18 years old. Over time, the term has gained criminal undertones, often used to describe young people who have broken the law. The Committee on the Rights of the Child prefers the term "child" instead of "juvenile", emphasizing a more inclusive and rights-oriented approach.

A juvenile is characterized by their age, which places them between childhood and adulthood. During childhood, individuals rely heavily on their parents or guardians. In adulthood, they assume greater responsibility for themselves and their actions. Adolescence, meanwhile, represents a transitional

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period where individuals are still dependent on their parents for basic needs but increasingly engage with wider social circles independently.

### Legal Definitions-

- **Juvenile Justice Act, 1986:** This legislation defined a juvenile as a boy under 16 years old and a girl under 18 years old, reflecting gender-based age differences.
- **Juvenile Justice (Care and Protection of Children) Act, 2015:** In contrast, this Act redefined a juvenile as any individual under 18 years old, eliminating the previous distinction between boys and girls. The Act has set the age of criminal responsibility at eighteen years.
- **JUVENILE IN CONFLICT OF LAW:** The term "juvenile in conflict with law" refers to a child who is below a specific age limit and is accused of committing an offense or violating penal laws. These juveniles are considered not mature enough to fully understand the nature and consequences of their actions and often lack the mental capacity, known as "*mens rea*," to commit a crime — a critical element in criminal law. *Mens Rea* in criminal law is a maxim that means guilty mind, which when accompanied by *Actus Reus* i.e. guilty act; comprises a crime. Their actions are often influenced by their tender age, immaturity, and socio-economic environment, which may contribute to their inability to distinguish between right and wrong.

### Legal Definitions

- **Juvenile Justice Act, 1986:** This legislation used the term "juvenile delinquent" to describe children who had committed offenses. However, this term carried a stigma, labeling children as criminals within society.
- **Juvenile Justice (Care and Protection of Children) Act, 2000:** Recognizing the negative impact of stigmatization, this Act replaced "juvenile delinquent" with "juvenile in conflict with law."<sup>3</sup> This terminology shift emphasizes that children who commit offenses do so under circumstantial reasons rather than inherent criminality.
- **DOCTRINE OF DOLI INCAPAX**<sup>4</sup>:

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<sup>3</sup> India Code: Juvenile Justice (Care and Protection of Children) Act, 2015  
[https://www.indiacode.nic.in/handle/123456789/2148?view\\_type=browse](https://www.indiacode.nic.in/handle/123456789/2148?view_type=browse)

<sup>4</sup> (Apr. 2, 2018), <https://www.pramanaresearch.org/gallery/25.%20marc%20ijirs%20%20-%20d594.pdf>

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"Doli incapax" is a Latin term meaning "incapable of doing harm," meaning thereby a child has no capacity to realize the consequence of his or her actions. It plays a crucial role in establishing the **presumption of innocence** for children in criminal law. Children are presumed innocent under Doli incapax until proven otherwise, recognizing their developmental stage and limited capacity for understanding the consequences of their actions. This concept is grounded in the principle that individuals should only be held criminally responsible for acts they intentionally commit. In India, the Code of Criminal Procedure recognizes Doli incapax by establishing an age line below which children are considered incapable of understanding criminal behavior due to their lack of moral and cognitive development, known as "**qualified immunity**".

**Section 82<sup>5</sup> of IPC 1860** provides for the exceptions of minors to be tried for culpability, where it is stipulated that children below the age of seven cannot be held criminally liable for any act. This means that if a child who is below the age of seven commits an act that would otherwise be considered a crime if committed by an adult, the child cannot be considered an offender or be tried for that act. A child up to the age of 12 years was to be queried for his/her mental maturity and capacity to know the consequences of the offense and only after analyzing such capacity a child could be charged for the offense.

*“Crime is any act that is punishable under a particular legal system, and juvenile delinquency refers to the behavior of youths that is deviant from society and not culpable under the Indian Penal Code. In India's juvenile justice system, no child convicted (of an offense) is liable for the legal procedures necessary to reform his behavior.”<sup>6</sup>*

## **HOW TO CLASSIFY A “JUVENILE IN CONFLICT OF LAW” AS AN ADULT?**

### **1. Age of culpability:**

The age of criminal responsibility in India has been subject to a *binary classification* that strictly divides human life into childhood and adulthood. This system creates a problematic scenario where individuals are considered either children or adults, thus ignoring the concept of adolescence. The mainstream policy discourse typically treats the entire age range from 1 to 18 years as a *homogeneous group*, failing to account for the different stages of development and the varying levels of maturity within this period.

The Juvenile Justice (Care and Protection of Children) Act 2015, has muddied the waters further by sticking to the outdated practice of splitting people into just two categories: children and adults. This rigid

<sup>5</sup> Indian Penal Code, 1860, Legal Service in India <https://www.advocatekhaj.com/library/bareacts/indianpenalcode/index.php?>

<sup>6</sup> Juvenile Justice Act: A Critical Study of Jurists Global Research, No.1 Legal Service in India: Litigation, Arbitration <https://juristsglobal.com/immigration/f/juvenile-justice-act-a-critical-study-of-jurists-global-research>

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classification doesn't leave room for recognizing the unique phase of adolescence. The Act does make one notable exception: teenagers aged 16 to 18 can be tried as adults if they're accused of serious crimes. However, this still doesn't fully address the complexity of adolescent development. Recognizing this distinction is crucial for addressing the specific needs and challenges that adolescents face during this critical stage of their development.

The conference titled "*Reassessing India's Juvenile Justice System*" was organized by the Observer Research Foundation at its Delhi campus on October 24, 2013. It was elucidated that the Act creates a distinct system of rights and enforcement for children and the key problem that plagues the system is that at the very basic level, the distinction between the rights of a child and an adult is not clarified.

***Whether age is an appropriate criterion at all, to classify someone as a juvenile; and if so, what age is appropriate? Should there be a graded treatment for different ages- and different crimes?<sup>7</sup>***

To fix the criminal responsibility, the age of the child is significant. It is believed that children cannot be put in the same category as adults under the Criminal Justice system of the country and hence requires the development of special provisions for them. The Hon'ble Supreme Court of India in *Salil Bali v. Union of India and Another* observed:

*"It was stated that the age of criminal responsibility in legal systems that recognize the concept of the age of criminal responsibility for juveniles should not be fixed at too low an age level, keeping in mind the emotional, mental, and intellectual maturity of children<sup>8</sup>."*

The Nirbhaya aftermath witnessed a wide and loud hue and cry from many quarters that the protection of juveniles from the regular criminal justice system must be done away with along with **lowering the age** of juvenility. A senior counsel based in Chennai C.A. Sunderam said,

*"It cannot be that a person 17 years and 364 days old when he commits rape escapes severe punishment and had he committed one day late could be liable to life imprisonment."*

Senior lawyer Manoj Goel suggested,

*"A Judge must be allowed to decide whether a young offender has the maturity, awareness, and consciousness of the crime being committed and then try such a person in the regular criminal courts under provisions."*

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<sup>7</sup> Just a moment..., <https://www.orfonline.org/research/reassessing-indias-juvenile-justice-system>

<sup>8</sup> Juvenility: From Criminality to Responsibility  
<https://anvpublication.org/Journals/HTMLPaper.aspx?Journal=International+Journal+of+Reviews+and+Research+in+Social+Sciences%3bPID%3d2018-6-4-1>

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The Juvenile Justice (Care and Protection of the Children) Act, 2015 has added to this confusion by following the exception for the age group of 16-18 years who would be tried as an adult if they are convicted of serious offenses under the law.

## **2. Seriousness of the Offense Committed:**

The Supreme Court of India in the case of **Shilpa Mittal v. State of NCT of Delhi (2020)** observed the necessity of categorizing offenses that are not adequately addressed under the current provisions of the Act. This amendment seeks to fill the gap identified by the case ensuring that there is no ambiguity in the classification of offenses committed by juveniles.

- **Heinous Offence:** The first circumstance requiring analysis is whether the crime committed fits the Act's definition of "heinous offenses". According to Section 2(33) of the JJ Act, 2015, heinous offenses are those for which the Indian Penal Code, 1860, or any other applicable law specifies a minimum punishment of seven years in prison or more. This classification is crucial because heinous offenses involve severe legal consequences and specific procedures under the Act.
- **Age of the Minor Accused:** The second circumstance is that the minor accused of committing the offense is between the ages of 16 and 18. This age group is significant under the JJ Act, 2015, as the Act provides for a different legal framework and additional considerations for minors in this age bracket, particularly when accused of heinous offenses.
- **Serious Offenses<sup>9</sup>:** An offense shall be classified as a 'Serious Offense' if the offense committed meets the following criteria:
  - a. The offense carries a maximum punishment of more than seven years imprisonment; and
  - b. There is no minimum sentence prescribed, or the minimum sentence prescribed is less than seven years imprisonment.
  - c. In cases where a child is accused of committing an offense that cannot be accurately classified under the existing categories of 'petty', 'serious', or 'heinous' offenses as per the JJ Act, 2015, the offense shall, until further legislative action by Parliament, be provisionally classified as a 'Serious Offense'.
- **Section 27 of the Code of Criminal Procedure, 1973<sup>10</sup>** states that "Any offense not punishable with death or imprisonment for life, committed by any person who at the date when he appears or brought

<sup>9</sup> Can a Juvenile be Treated as an Adult in Court? [UPSC Polity Notes], (Apr. 26, 2023), <https://byjus.com/free-ias-prep/how-can-a-juvenile-be-tried-as-an-adult-in-court-upsc-notes>

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before the court is under 16 years may be tried by the court of chief judicial magistrate, or by any court specially empowered under the Children Act, 1960(60 of 1960), or any other law for the time being in force (now being the Juvenile Justice Act 2015) providing for the treatment, training, and rehabilitation of youthful offenders.”

### **JUVENILE DELINQUENCY – CAUSES**

To begin with, juvenile delinquency is the result of a change in the behavioral pattern of the juvenile. As soon as a child comes out into the real world, his behavior starts changing with time and circumstances. It refers to a juvenile engaged in illegal activities or behavior. It may always be not considered a criminal activity but such behavior causes harm to other people. Such behavior of the juveniles develops from a tender age and can be identified by the following causes-

- **SOCIAL FACTORS:**

- a. Breakdown of family** - Broken families and looseness of parental control are the main reasons behind the growing rate of juvenile delinquency. If due to some circumstances, the home breaks down it can cause devastating impacts on the juvenile. Lack of love and affection, laxity in parental control, and divorce of parents will severely impact the development of the child.  
X a 14-year-old girl confessed that she along with her mother killed his alcoholic father. It was the situation that made the girl and his mother did that because she was often brutally tortured by his father.
- b. Economic status and poverty** - It is also an important factor in contributing to the rise of juvenile delinquency. Due to the inability of parents to fulfil their children's needs such as better education, healthy lifestyle, food, clothing, etc, the children to satisfy their quest their desires by hook or crook ultimately attracts them towards illegal activities.
- c. Migration**- Due to the migration of destitute juveniles to slum areas, they came in contact with anti-social elements that are the main root cause of some illegal activities such as smuggling of drugs and prostitution, etc.
- d. Bad company** - Society plays an important role in building a child's behavior. Poor companionship and peer pressure can lead to criminal activities and there are high chances of becoming a criminal.

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<sup>10</sup>The Code of Criminal Procedure, 1973, (Aug. 7, 2020)

[https://www.indiacode.nic.in/bitstream/123456789/15272/1/the\\_code\\_of\\_criminal\\_procedure%2C\\_1973.pdf](https://www.indiacode.nic.in/bitstream/123456789/15272/1/the_code_of_criminal_procedure%2C_1973.pdf)

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- e. **Modernistic lifestyle** - The children personally find it difficult to adjust to the new lifestyle as well as ever-changing societal patterns which will lead them to make irrational choices, unable to differentiate between right and wrong, and confront them with several socio-economic problems.
- **PERSONAL FACTORS:**
    - a. **Mental instability** - From a study, it has been found that psychological factors like mental sub-normality, instability of mind, imbalanced personality, emotional conflicts, intolerance for ambiguity and other negative factors push and pull children to delinquent behavior.
    - b. **Emotional breakdown** – Nowadays, jealousy and inferiority are become common among children. When a child is deprived of his fundamental rights such as the right to equality and feels that the whole society is against him, then he commits something that is against the law of the land.
    - c. **Indulgence in Sexual Activities** – Sexual activity and risky sexual behaviors are linked to delinquency in adolescents, even in late adolescence. Being sexually active correlates with depression until middle adolescence. Risky sexual behaviors pose concerns throughout adolescence, highlighting the need for effective interventions and education to mitigate these risks<sup>11</sup>. It often leads to a rise of sexual offense among juvenile delinquents done with the motive of revenge.
  - **BIOLOGICAL FACTORS** – Early psychological maturity, lack of knowledge of the laws, and lack of intelligence are also major contributing factors in the increase in cases of juvenile delinquency. Biological theories suggest that susceptibility to delinquency may be influenced by hormonal, neurological, or hereditary factors. Understanding these biological influences is crucial for developing targeted interventions and treatments to mitigate delinquent behavior effectively.

### **SUPREME COURT JUDGMENTS**

The question of the ‘claim of juvenility’ is still a highly debated issue among legal attorneys and professionals. With changing times, the growing crime rate has also increased, it is necessary to consider whether a juvenile is capable of trying as an adult or not.

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<sup>11</sup> Delinquency and sexual experiences across adolescence: does depression play a role?, PubMed (Sept. 13, 2017), <https://pubmed.ncbi.nlm.nih.gov/28902522/>

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### 1. *Hari Ram v. State of Rajasthan (2009)*<sup>12</sup>

In this case, the accused Hari Ram was engaged in several criminal cases.

- Issue- The issue before the Supreme Court was regarding—
  1. Determination of his age
  2. Which act would apply to him
  3. Whether the accused should be tried as an adult or not?
- Judgement – The court held that the 2000 Act would apply to all the pending cases after its enactment. As the age of the accused is 16 years on the date of the crime committed, he would be considered a juvenile.

### 2. *Mukesh and Anr. v State for NCT of Delhi &Ors. (Nirbhaya Rape Case) 2012*<sup>13</sup>

An act of gang rape was committed by six men including a minor of age 17 in a moving bus.

- Issue – Whether a juvenile should be tried as an adult or not?
- Judgement – The bench awarded death sentence to all 5 accused as this comes under the ‘rarest of the rare case’. The minor was sent to a correction home for 3 years owing to the fact that he was minor at the time of committing the crime.

### 3. *Salil Bali v Union of India (2013)*

In this case, a juvenile of age 17½ years was charged with the offense of rape.

- Issue- 1. Whether a juvenile must be freed after he attained the age of majority despite of the fact that his punishment has not been completed yet.

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<sup>12</sup> Hari Ram v. State of Rajasthan, (2009) 13 SCC 211, Legal Vidhiya (Nov. 26, 2023), <https://legalvidhiya.com/hari-ram-v-state-of-rajasthan-2009-13-scc-211/>.

<sup>13</sup> Just a moment..., <https://thelegalquorum.com/nirbhaya-rape-case-mukesh-anr-v-state-nct-of-delhi-ors/>.

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2. Whether the age under section 15 of the JJ Act should be reduced to 16 years from that of 18 years. (This issue has been raised in the wake of the Nirbhaya case)

- Judgement - The court held that “It is only a misconception that the juvenile must be freed after attaining the age of majority but in reality, he will have to complete his whole sentence regardless of his age of majority.”

The age of 18 years is considered the suitable age considering scientific and psychological grounds, until this age, a juvenile can be reformed and reintegrated into society.

#### 4. *Dr. Subramanian Swamy v Raju, Thr. Mumbai Juvenile Justice Board (2014)*

The facts of this case are similar to that of the Nirbhaya case, in which a woman was brutally assaulted sexually which resulted in her death. One of the accused was a minor.

- Issue- Whether a juvenile can be tried as an adult or not?
- Judgement – The court held that the intention behind putting people under the age of 18 years in a **separate category** is to rehabilitate and reform them. Therefore, the juvenile must be tried under the JJ Act.

#### 5. *Satya Deo v State of Uttar Pradesh (2020)*

The Satya Deo and others were convicted by the trial court for the offense of murder. At the time of the commission of the offense, he was a minor.

- Issue- To ascertain whether he was a juvenile or not on the date of occurrence of the crime.
- Judgement - According to Section 25 of the JJ 2015, Act even if the offense took place before the commencement of the 2000 Act, the act continued to be applied to the pending cases and this will not impact the right of the child to be tried as a juvenile if at the time of the commission he was below 18 years.

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## 6. *Barun Chandra Thakur v Master Bhola (2022)*<sup>14</sup>

In this case, Section 15 of the Juvenile Justice( Care and Protection of Children) Act 2000 was challenged which says that – The board may take the assistance of an experienced psychologist, psycho-social workers, and other experts for determining the mental and physical capacity of the minor.

- Issue- Whether section 15 should be mandatory or not?
- Judgement - The word ‘may’ would operate in mandatory form & board would be authorized to take assistance from experts.

### **AMENDMENTS: Changes Done and The Changes That Are Required**

The Juvenile Justice Act 2000 was passed to ensure the protection and general care of children by rehabilitating them as well as reintegrating them into society. Moreover, the intention behind bringing this act is not to punish the children but to reform them. Although there was a huge uproar in the general public, post the Nirbhaya case for more severe punishment to the juveniles involved. Owing to this, The National Commission for Protection of Children (NCPCR) has issued guidelines for conducting a preliminary assessment by the Juvenile Justice Board (JJB) under section 15 of the Juvenile Justice Act, 2015. This analysis is to determine whether a juvenile can be tried as an adult in the court.

### **Primary reasons for Amending the 2000 Act:**

- According to the figures cited by the National Crime Bureau Record (NCBR), there had been an upsurge in the numbers of juveniles committing heinous crimes, particularly in the age group of 16 to 18 years.
- In the 2000 act, there was no specific distinction between children in conflict with the law and children requiring protection and care.
- The amendment in the 2000 act was a consequence of public atrocity in the infamous Delhi gang-rape case (Nirbhaya case) in 2012. In this case, one of the accused was a juvenile.

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<sup>14</sup> Barun Chandra Thakur v. Master Bholu And Anr 2022 LiveLaw (SC) 593, (Sept. 29, 2023), <https://www.livelaw.in/tags/barun-chandra-thakur-v-master-bholu-and-anr-2022-livelaw-sc-593>

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- The legislation wants to achieve a balance between children's rehabilitation and punishment.

### **Features of Juvenile Justice Act 2015:**

The JJ Act 2015 introduced several changes to the earlier law making the juvenile justice system more responsive to the ever-changing circumstances of the society. The amendment redefines the juvenile accused accountability and responsibility.

- The amendment changed the nomenclature of 'juvenile' to 'child' and 'child in conflict with the law'.
- The amendment lays down the procedure for trying a juvenile as an adult, offender in heinous crimes.
- The act has introduced three categories of the offenses committed by children-
  1. **Petty offenses**- Offences for which the maximum punishment under the IPC or any other law in force at that time is imprisonment for up to three years.
  2. **Serious offenses** – Offences for which the punishment under the IPC or any existing law is imprisonment between three to seven years.
  3. **Heinous offenses**- Offences for which the minimum punishment under the IPC or any other law for the time being in force is imprisonment for seven years or more.
- The act provides more transparency in the functions and powers of the Juvenile Justice Board (JJB) and Child Welfare Commissioner (CWC).
- A significant change brought under section 15 of the 2015 Act is that it provides a provision for treating minors in the age bracket of 16-18 years as an adult in the case of heinous crimes.
- For trying a juvenile as an adult, the JJ Board would preliminarily assess the child's physical and mental capacity, his or her ability to understand the nature and consequences of the crime committed, the circumstances in which he or she committed the crime, and determine whether he or she can be tried as an adult in the court.

### **Consequences of Trying Juvenile as an Adult**

- Sentence can go up to life imprisonment, which under the earlier law, was only up to a maximum of three years, irrespective of the crime committed by the juvenile.
- Relevant records of conviction of the child tried by the board can be directed to be destroyed, but the same benefit would not be granted in the case where the child is tried as an adult.
- Generally, disqualification attached to the conviction shall be removed for a child tried by the JJ board, but the same would not be applicable in the case when a child tried as an adult.

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It was acknowledged that a case regarding the punishment of the juvenile offender can't merely be decided on the grounds of the age of the juvenile but it should also take into consideration the gravity of the offense committed by him/her.

However, the shortcomings of the JJ Act were put to the limelight by plenty of cases where the juvenile sought protection under the JJ Act and were considered as having gone awry rather than a person with criminal intent.

### **RESPONSIBILITIES OF THE JUVENILE JUSTICE BOARD (JJB)**

The Juvenile Justice Board is a competent body to deal with cases related to 'juvenile in conflict with law'. The main objective of the Juvenile Justice Board is to rehabilitate and reform the 'juvenile in conflict with law' instead of punishing them. The procedure of the board should be rehabilitation-oriented, child-friendly, and not adversative.

- Preliminary assessment of the offender juvenile – Circumstances that lead to the preliminary assessment process:
  1. The crime committed should meet with the definition of 'heinous' offenses.
  2. The age of the offender minor should be between 16 to 18 years.

The sole responsibility of the JJ Board is to complete the whole preliminary process within 3 months from the date on which the accused child was initially produced.

- Why preliminary assessment held– It helps consider the following -
  1. *Physical and mental capacity* of the offender's child for committing the offense.
  2. The ability of the child to understand the nature and *consequences* of the alleged offense.
  3. The *circumstances* in which the offense was committed by the child.
- Assistance from the experts– If required the board can take the assistance of experienced psychologists, psycho-social workers, and other experts.

The JJ Act also gives clarity that the preliminary assessment is not a trial, but is only a way to assess the capacity of the child both mentally and physically as well as to know the consequences of the offense committed.

- Winding up the process- After the assessment, the board concluded whether the minor should be tried as an adult. After this, the case will be transferred to the Children's Court with the concerned jurisdiction if the board believes that the youth offender should be treated as an adult in the court.
- Additional responsibilities–
  1. The board shall also be responsible for providing a copy of the order sheet to the child, his family, and their counsel as well
  2. The child should also be accompanied by a legal aid counsel through the District Legal Service Authority (DLSA).
  3. There are mainly two reports that have been analyzed and taken into consideration by the board and experts during the preliminary assessment –
    - The Social Investigation Report (SIR) which is prepared by a probation officer, any social worker, or child welfare officer.
    - The Social Background Report (SBR) which is prepared after having interaction with the child and his/her family.

#### **ISSUES WITH THE IMPLEMENTATION OF THE JUVENILE JUSTICE SYSTEM IN INDIA :**

- **Insufficient funds** – Since there is no proper allocation of funds for rehabilitation, education, and protection of juveniles, the authorities are unable to prevent juvenile delinquency and raise awareness about the negative consequences of this.
- **Lack of knowledge of the Amended Act**- The general public is unaware of the Juvenile Justice (Care and Protection of Children) Act 2015. Owing to this fact, people are also not aware of the several programs and policies of the government focused on the empowerment and rehabilitation of children.
- **Ramifications of trying juvenile as an adult** – The juveniles of the age group 16 to 18 years are deprived of their right to equal treatment and other rights provided by the juvenile justice system. Moreover, they don't have that much understanding and knowledge as compared to adults.
- **Inefficiency administration** –The Juvenile and Child Welfare Officers are not penalized for omitting their duties due to which there is a lack of accountability on their part which ultimately fails to provide children justice.
- **The Subjective Juvenile Justice Board** - The procedure of the Board is highly subjective which could result in imposing an excessive amount of culpability on juveniles which further causes outrage in the general public and they would be tried as an adult.

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**INTERNATIONAL PERSPECTIVE****• United States of America***i) Juvenile Justice and Delinquency Prevention Act (JJDP)*

- Set standards for the treatment of juveniles, focusing on deinstitutionalization, separation from adult offenders, and addressing disproportionate minority contact.
- Juvenile courts handle cases for individuals under 18, but in certain cases, juveniles can be tried as adults.

ii) In the United States, each state has a juvenile court, typically functioning as a specialized unit within the State Judicial Service, with the general age limit for juvenile trials set at **17 years**. Juveniles, however, have the right to waive their right to trial in juvenile court, leading to their trial in an adult court. Additionally, certain young offenders, especially those nearing adulthood and involved in repeated or particularly serious offenses, may be transferred to adult courts. This dual approach allows the system to balance rehabilitation with the need to protect society.

**• United Kingdom of Great Britain and Northern Ireland***i) Children and Young Persons Act 1933*

- Emphasizes the welfare of children and the importance of rehabilitation over punishment.
- The age of criminal responsibility is **10 years**. Serious offenses may be tried in Crown Court, but most cases are handled by Youth Courts.
- The Criminal Justice Act 1948 further strengthened protections for young offenders in remand homes, ensuring their safety and well-being during legal proceedings. By the Criminal Justice Act 1982, the UK aligned its juvenile justice laws with international standards, focusing on fairness and rehabilitation, reflecting broader societal norms towards humane treatment and reintegration of young offenders.

• In **Norway**, juveniles aged 14 to 18 involved in criminal cases are referred to the Municipal Juvenile Welfare Committee. This committee assesses each case individually and recommends rehabilitative measures. Under the *Child Welfare Act of 1953*, delinquent juveniles can stay at home under committee supervision, with regular home visits and preventive measures suggested to deter further criminal activity. Norway emphasizes medico-psychological methods to address underlying issues, aiming for rehabilitation and successful societal integration of young offenders.

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- In **Canada**, the *Youth Criminal Justice Act (YCJA) 2003* emphasizes rehabilitation and reintegration for young offenders, with non-custodial sentences and provisions for extrajudicial measures to divert youth from formal court processes, setting the age of criminal responsibility at **12 years**.
- **Australia's** *Young Offenders Act 1997* encourages alternatives to court through warnings, cautions, and youth justice conferences, with an age of criminal responsibility set at **10 years**, promoting a rehabilitative approach even for serious offenses.
- **South Africa's** *Child Justice Act 2008* establishes a separate system focusing on restorative justice and diversion, with an age of criminal responsibility also set at **10 years**, utilizing family group conferences and specialized child justice courts.
- **Brazil's** Statute of the Child and Adolescent protects juvenile rights, stressing rehabilitation and social reintegration for offenders **aged 12 to 18** through socio-educational measures like community service and confinement in educational facilities.

### **Is this a time to make some changes?- A Debatable Topic**

#### **ARGUMENTS IN FAVOR OF JUVENILE DELINQUENCY**

*“There was a “mismatch” between the ideals of the juvenile justice law and its implementation.”<sup>15</sup>*

-Justice B V Nagarathna

- **The Gravity of the Crime** – The Exponent of trying a juvenile as an adult argues that some crimes are so severe in nature that the offender should be held accountable, irrespective of age. They believe that such crimes tend to shake the whole society, therefore, to protect the community, it became an indispensable step to try juveniles as adults to ensure that every dangerous criminal should be beyond the bar.
- **Doctrine of Doli Capax**- Doli Capax means ‘capable of doing wrong’ in Latin. This means that the juveniles of the age bracket 16 to 18 years are old enough to differentiate right from wrong. They are committing crimes with full knowledge as well as maturity and therefore same enough to be held legally responsible for the wrongful acts done by them. While trailing juvenile, while trailing juvenile, the sole factor is not only the state of body but it is also necessary to consider the state of mind of the juvenile committing the offense.

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<sup>15</sup>PTI News, Juvenile delinquents not born criminals, citizens must pledge to assist: Justice B V Nagarathna, Law Trend (Sept. 23, 2023), <https://lawtrend.in/juvenile-delinquents-not-born-criminals-citizens-must-pledge-to-assist-justice-b-v-nagarathna/>

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- **General Public Safety** – Public safety is the foremost concerned of the supporters of trying juveniles as an adult as trying them as adults will ultimately protect the public from future harm. There are high chance of juveniles who have committed grave offenses re-offending, thus it is necessary to try them as an adult which will reduce the crime rate and ensure public safety.
- **Deterrence Theory** – John Locke was the supporter of this theory and said that “every commissioner of crime should be made a ‘bad bargain’ for the offenders.” The exponents of this theory believe that to prevent other juveniles who tend to commit crimes in the future, it is necessary to give severe punishment to the juvenile while trying them as an adult.

### **ARGUMENTS AGAINST JUVENILE DELINQUENCY**

*There never was, there cannot be a ‘juvenile delinquent.’ But for every juvenile criminal, there are always one or more adult delinquents—people of mature years who either do not know their duty, or who, knowing it, fail.*<sup>16</sup>

-Robert A. Heinlein

- **Immaturity** – Opponents support the ‘Doctrine of Doli Incapax’ which means that a juvenile is incapable of committing a wrong due to lack of maturity and knowledge. They believe that juveniles are not fully developed and have less understanding of the consequences resulting from their actions.
- **Reformation and Rehabilitation** – The sole objective of not trying juveniles as an adult is to reform and rehabilitate them so that they can reintegrated with society. One of the factors that distinguish the criminal justice system from the juvenile justice system is that in the juvenile justice system education is provided to all the needy juveniles whereas the criminal system only focuses on punishment.
- **Long-lasting Consequences** - The consequences of trying a juvenile as an adult would have a devastating and long-lasting impact on his/her future. The criminal record can limit several opportunities such as jobs, education, etc which will further make the juvenile life miserable.

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<sup>16</sup> Basic concept of juvenile delinquency, (Sept. 13, 2015), <https://www.lawweb.in/2015/09/basic-concept-of-juvenile-delinquency.html>

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- **Lack of Responsive Environment** – It is not only the juvenile who has committed the crime but the parents and society are equally responsible for not providing a good upbringing to the juvenile and letting them drift towards crimes.

## **CONCLUSION**

Juvenile delinquency remains a poignant issue at the intersection of law, psychology, and societal responsibility. The debate over whether juveniles should be tried as adults continues to stir controversy, reflecting divergent views on justice, rehabilitation, and public safety. This research has explored various facets of juvenile justice systems globally, highlighting both successes and challenges.

In India, the Juvenile Justice (Care and Protection of Children) Act 2015 attempts to balance accountability with rehabilitation, recognizing the developmental differences and vulnerabilities of juveniles. The Act's provision allowing juveniles aged 16 to 18 to be tried as adults for heinous offenses underscores the complexities in determining legal maturity and responsibility.

Internationally, different countries adopt diverse approaches to juvenile justice, reflecting cultural norms and legal frameworks aimed at balancing accountability with rehabilitation. Countries like Norway and Canada emphasize rehabilitation and community integration, while others, like the United States, allow for juvenile offenders to be tried as adults under specific circumstances.

In conclusion, while the treatment of juvenile offenders continues to evolve, the predominant goal must remain the holistic development and well-being of young individuals within society. Only through comprehensive approaches can we aspire to alleviate juvenile delinquency while nurturing a future where every child has the opportunity to flourish.

***“A child is a person who is going to carry on what you have started. He is going to sit where you are sitting, and when you are gone, attend to those things you think are important. You may adopt all the policies you please, but how they are carried out depends on him. He is going to move in and take over your churches, schools, universities, and corporations. The fate of humanity is in his hands”.***

**- Abraham Lincoln**